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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,765	12/28/2000	Mitchell R. Swartz		8044

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/750,765

Applicant(s)

SWARTZ, MITCHELL R.

Examiner

Rick Palabrica

Art Unit

3641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 28 October 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet

MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER

Continuation of 9. Other (including any explanation in support of the above items):

- a. The statement of the Status of Claims is inconsistent with Appendix A (Claims Involved in the Appeal). Claims 11 and 20 are not listed in the Status Of Claims but they are listed in Appendix A.
- b. The statement of Status of Amendments is confusing because it appears to refer to the original claim 5, instead of an amended claim 5.
- c. The Summary of Invention is improper because it includes subject matter not found in the disclosure (e.g. see page 4, 2nd paragraph which is not recited in the Abstract).
- d. The recitation and scope of Issues is improper because it does not conform to MPEP 1206. For example, applicant does not specify the basis of the alleged unpatentability of the claims. An example of a proper way of phrasing an issue is as follows: "Whether claims 1-20 are unpatentable under 35 U.S.C. 112, first paragraph, based on a nonenabling disclosure." Each issue should correspond to a separate ground of rejection, and the statement of issues should not include any argument concerning the merit of the issues. Other examples of impropriety include: a) associating operability of the claimed invention with 35 U.S.C. 112 1st and 2nd paragraphs issues; b) improperly including items not relevant to the grounds of rejection used by the examiner, e.g., 1.192c(6)(v), statements on "disingenuous claim by the Office," etc.
- e. The statement on Grouping of Claims is improper because it includes arguments as to why claims 1, 4 and 5 distinguish and limit the invention. These arguments should be in the Argument section.
- f. Applicant's contentions in the Arguments section are improper. Examples of impropriety include: a) issues of operability and utility are improperly associated in arguments regarding the 35 U.S.C. 112, 1st paragraph rejection (see page 22 of the Brief); b) arguments regarding 35 U.S.C. 112, 2nd paragraph, improperly discusses 35 U.S.C. 102(b) rejection of claims (e.g., see page 92); c) claims rejected under 35 U.S.C. 112, 2nd paragraph are not correctly identified (e.g., see item 75, page 92); d) claims rejected as being anticipated by Kinsella under 35 U.S.C. 102(b) are not correctly identified (e.g., see item 95, page 110). The Grouping of Claims section states that "the appealed claims do not stand or fall together." However, there is no discussion in the Arguments section as to why EACH claim is considered separately patentable.
- g. Appendix A, which the applicant refers to as listing claims involved in the Appeal, is incorrect. For example, a) claim 19 does not include the qualifying term "active" before "quantity"; b) claims that have not been rejected, such as claims 11 and 20, are improperly included in the list.
- h. The purpose of Appendix B is unclear. Applicant should either properly relate this Appendix to his arguments or delete it.